FILED
JAN 9 1956
HAROLD B. WILLEY, Cle

IN THE

Supreme Court of the United States

October Term, 1955.

No. 618

THE CITY OF LOS ANGELES, a municipal corporation, ROGER ARNEBERGH, City Attorney for the City of Los Angeles, WILLIAM H. PARKER, Chief of Police of the City of Los Angeles, WALTER C. PETERSON, City Clerk of the City of Los Angeles,

Petitioners,

vs.

NATIONAL SCHOOLS and RADIO-TELEVISION TRAINING SCHOOL, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

ROGER ARNEBERGH,
City Attorney,
BOURKE JONES,
Assistant City Attorney,
JAMES A. DOHERTY,
Assistant City Attorney,
Suite 400, City Hall,
Los Angeles 12, California,
Counsel for Petitioners.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

SUBJECT INDEX

PAGE

Opinion below 2

Jurisdiction 2

Question presented 3

Statute and constitutional provision invoked 4

Statement of facts 5

(National Schools) 5

(Radio-Television Training School) 6

Specification of error 7

Reasons relied upon for the granting of the writ 8

Conclusion 12

Appendix:

Exhibit A. Opinion of the District Court of Appeal ....App. p. 1

Exhibit B. Radio-Television Training School, Inc. Field Representative's Contract ..... App. p. 20

TABLE OF AUTHORITIES CITED

CASES

	PAGE
American Manufacturing Co. v. City of St. Louis, 250 U. S. 459	10
California v. Thompson, 313 U. S. 109	9
Central Greyhound Lines, Inc. v. Mealey, 334 U. S. 653	11
Gwin, White & Prince, Inc. v. Henneford, 305 U. S. 434	11
International Harvester Co. v. Evatt, 329 U. S. 416	10, 11
International Text-Book Co. v. Pigg, 217 U. S. 91	11
McGoldrick v. Berwind-White Coal Mining Company, 309 U. S. 33	9
McGoldrick v. Compagnie General Transatlantique, 309 U. S. 430	9
Memphis Natural Gas Co. v. Stone, 335 U. S. 80	10
Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 157	10
Miller Bros. Co. v. Maryland, 347 U. S. 340	10
Nelson v. Sears, Roebuck & Company, 312 U. S. 372	9
Norton Company v. Department of Revenue, 340 U. S. 534	11
Richfield Oil Corp. v. State Board of Equalization, 329 U. S. 69	9
Utah Power and Light Co. v. Pfost, 286 U. S. 165	10
Western Live Stock v. Bureau of Revenue, 303 U. S. 250	10, 11

RULES

Rules of the United States Supreme Court, Rule 23(5)	1

STATUTES

Los Angeles Municipal Code, Sec. 21.149	3, 4, 7
United States Code, Title 28, Sec. 1257(3)	2
United States Constitution, Art. I, Sec. 8, Clause 3	3, 4, 7, 8

IN THE

Supreme Court of the United States

October Term, 1955.

No. .....

THE CITY OF LOS ANGELES, a municipal corporation, ROGER ARNEBERGH, City Attorney for the City of Los Angeles, WILLIAM H. PARKER, Chief of Police of the City of Los Angeles, WALTER C. PETERSON, City Clerk of the City of Los Angeles,

Petitioners,

vs.

NATIONAL SCHOOLS and RADIO-TELEVISION TRAINING SCHOOL, INC.,

Respondents.

PETITION FOR WRIT OF CERTIORARI.

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Petitioners, The City of Los Angeles, a municipal corportion, and the City Attorney, Chief of Police and City Clerk thereof, respectfully pray that a Writ of Certiorari be issued to review the decision of the District Court of Appeal of the State of California of the Second Appellate District, Division Three, in the cases of *National Schools v. City of Los Angeles, et al.,* and *Radio-Television Training School, Inc. v. City of Los Angeles, et al.,* which involve closely related questions and are for the most part identical and are embraced within this single petition for Writ of Certiorari pursuant to Rule 23(5).

Opinion Below.

The opinion of the District Court of Appeal is reported in 135 A. C. A. 393, 287 P. 2d 151, and is appended hereto. [Ex. A.] A copy is also contained in the Record, commencing at page 103. Timely petitions for rehearing and hearing in the Supreme Court of California were both denied without further opinion. The denial of the petition for rehearing is reported on page 3 of the minutes following 135 A. C. A. 794 under "Division Three." The denial of the petition for hearing in the Supreme Court is reported on page 3 of the minutes of that Court following 45 A. C. 462. A certified copy of this order, filed November 3, 1955, is contained in the Record at page 123.

Jurisdiction.

The judgment of the California District Court of Appeal which petitioners seek to have reviewed was filed on September 6, 1955, and entered on that date. On September 21, 1955, petitioners filed a timely petition for rehearing which was denied without opinion on September 26, 1955. On October 14, 1955, petitioners filed a petition for hearing in the Supreme Court of California and the same was denied without opinion on November 3, 1955. [R. p. 123.]

The jurisdiction of this Court is invoked under 28 U. S. C., Section 1257(3). Each case originated in the Superior Court in and for the County of Los Angeles by complaints filed by respondents who are trade schools located in the City of Los Angeles, but receiving substantial receipts from correspondence students residing outside of California. Each case sought a declaratory judgment to determine the application of the Los Angeles business license tax, which is measured by the gross re-

ceipts of the business concerned, to the correspondence school activities of the respondents. The challenge to the tax as being repugnant to the commerce clause of the Federal Constitution is the subject of this petition. Other challenges were decided in favor of the City.

The cases were tried upon written stipulations of fact and documentary exhibits. The Superior Court entered a judgment that, "gross receipts attributable to fees collected from home study students whether located within or beyond the limits of the State of California are properly and validly included in the measure of the tax imposed." [R. pp. 41, 73-74.] On appeal the District Court of Appeal held that, "The tax is imposed upon the conduct of the school which itself constitutes interstate commerce and which is readily separable into interstate and intrastate branches" [R. pp. 108-109] and that, "The proper construction of Section 21.149 is that it applies to appellants' intrastate correspondence school activities (10 per cent and 18 per cent of the respective business) but not to the interstate activities" [R. p. 116] and reversed the judgment in each case "with instructions to make and enter judgment not inconsistent with the views hereinabove expressed." [R. p. 121.]

Question Presented.

These two cases present the vital question of the impact of the commerce clause of the Federal Constitution (Art. I, sec. 8, clause 3) upon the power of the State and its agencies of local government to impose license taxes for revenue, measured by gross receipts, upon local businesses engaged to a greater or less degree in both intrastate and interstate commerce, such as in the case of the trade schools here involved which are wholly located within the City of Los Angeles, conduct their busi-

nesses exclusively therein and engage in interstate commerce only to the extent that through the United States Mail they enroll and instruct correspondence students who reside outside the State of California.

Statute and Constitutional Provision Invoked.

1. Article I, section 8, clause 3 of the Constitution of the United States which provides:

> "The Congress shall have Power . . . To regulate Commerce with foreign Nations, and among the several States, and with the Indian Tribes."

2. That portion of the Los Angeles Municipal Code, being Ordinance No. 77,000, as amended to Ordinance No. 98,765, of the City of Los Angeles, which provides in Section 21.149 thereof that:

> "For every person conducting a trade school, trade college, business school, business college, beauty school or beauty college, where instruction is given in any trade or occupation and a fee is charged for such instruction or compensation is received by such school or college by the sale of any goods, wares, merchandise or services, the sum of $12.00 per calendar year or fractional part thereof for the first $12,000 or less of gross receipts, and in addition thereto, the sum of $1.00 per year for each additional $1,000 or fractional part thereof, of gross receipts in excess of $12,000. The provisions of this section shall not apply to a dramatic school."[1] [Ex. A to Supplemental Complaint in each case, R. pp. 17 and 67.]

---

[1]The text quoted is from Ordinance No. 98,765, effective January 1, 1952. When the action was commenced in 1950, the section provided a rate of $4.00 per $1,000 of gross receipts. (Ordinance No. 77,868. See Ordinance pamphlet attached at page 124 of Record.)

Statement of Facts.

(National Schools.)

Respondent National Schools is a trade school offering courses in radio, television and allied elecronics, diesel, automotive and allied mechanics. Its executive offices and place of business are located in the City of Los Angeles. [R. p. 24.] The school is divided into three departmental operations: (1) the residence trade school conducted within the City of Los Angeles; (2) the home study division through which it conducts correspondence courses with students throughout the United States, 90% of which reside outside of California; and (3) the students' store located in the school buildings in Los Angeles in which are sold school supplies needed by resident students. [R. pp. 24-29.] The store is open to the public, but is patronized principally by students of the school.

Lessons, instructions and experimental equipment are prepared by National Schools in Los Angeles and sent to the home study students by mail. [R. p. 25.] Each pupil is supplied with as many as 139 lessons in approximately 33 separate packages and approximately 20 pounds of equipment in as many as nine separate packages over an 18-months' period of the course. [R. pp. 28-29.] The student studies the lessons, uses the equipment to perform experiments, and completes the examinations in his home. [R. p. 25.] He forwards the completed lessons, experiments and examinations to the school by mail for analysis and correction. [R. pp. 25-26.] National Schools has paid the license tax measured by the receipts from the resident school and this petition raises no question as to taxes due from the operation of its students' store. The ques-

tion presented in this petition for review is limited to receipts derived from students enrolled in the home study division who reside outside of California.

(Radio-Television Training School.)

The respondent Radio-Television Training School is engaged exclusively in the business of conducting a trade school by correspondence, teaching through home study its courses in radio, television and allied electronics. [R. p. 77.] Its executive offices and place of business are located in the City of Los Angeles. [R. pp. 77-78.] Radio-Television Training School prepares lessons in Los Angeles and forwards them by mail to its students at their places of residence. [R. p. 80.] It also forwards experimental equipment to its students to be used in conjunction with the lessons. [R. p. 81.] The students study the lessons, complete the examinations and experiments, and forward their result by mail to Radio-Television Training Schools in Los Angeles. [R. pp. 80-81.] The school corrects and analyzes the results and forwards them to the students. [R. pp. 80-81.] The students are also required to forward progress reports by mail. [R. p. 81.] In general students require 18 months to complete the course during which they receive 112 lessons in 49 packages and 13 separate packages containing parts. [R. pp. 82-83.] Approximately 82% of Radio-Television Training School students reside in states other than California. [R. p. 78.] Radio-Television Training School has paid no license tax to the City of Los Angeles. The school maintains 15 field representatives throughout the United States. [R. p. 78.] The text of the field representatives' contract with Radio-Television Training School is appended to this petition as Exhibit B. Radio-Tele-

vision Training School has not contended that the field representatives are employees of Radio-Television Training School, as distingushed from independent contractors. It is clear from an examination of the contract appended hereto that these field representatives are independent contractors as distinguished from employees.

The federal question sought to be reviewed by this petition appears to have been first raised by the allegations of the complaint in each case filed in the Superior Court, alleging the above-described method of doing business by each respondent and the percentage of its correspondence students residing in states other than California. [R. pp. 5 and 54.] The judgments of the Superior Court held that the total gross receipts derived from the correspondence school activities must be included in computing the amount of license tax due the City of Los Angeles. [R. pp. 41 and 73-74.] The District Court of Appeal reversed that portion of the judgment, insofar as it required the inclusion of gross receipts derived from students residing outside the State of California, on the ground that to construe the license tax ordinance as requiring the inclusion of such gross receipts would be in conflict with the commerce clause of the Federal Constitution, to wit, Article I, section 8, clause 3.

Specification of Error.

The District Court of Appeal erred in holding that the commerce clause of the Federal Constitution, to wit, Article I, section 8, clause 3, prohibits the construction of Section 21.149 of the Los Angeles Municipal Code (the pertinent portion of the Los Angeles occupational license tax ordinance here involved) as requiring the inclusion, in computing the amount of the tax due, of the

gross receipts derived from correspondence students (or home study students) residing in states other than the State of California.

Reasons Relied Upon for the Granting of the Writ.

A federal question of substance not heretofore determined by this Court is presented and has been decided in a way probably not in accord with applicable decisions of this Court in that the District Court of Appeal decided that a trade school business wholly located within and operated exclusively from a city may not be subjected to a city occupational license tax in the case where, or to the extent that, its correspondence school students reside in states other than the state in which the municipality in question is located, for the reason that to do so would be in conflict with the supremacy of the commerce clause of the Federal Constitution (Art. I, sec. 8, clause 3). This vitally affects the sources of revenue to which a city may resort to recoup from businesses of this nature their proportionate cost of maintaining local city government while at the same time demanding and receiving local municipal services of the same type and character as all other businesses within the city whose activities do not include interstate commerce.

The decision of the District Court of Appeal in this regard is not in accord with applicable decisions of this Court and the Writ should issue for the following reasons:

I.

This Court has reviewed and reversed final judgments of state courts which, in similar circumstances, invalidated state taxing acts as being repugnant to the commerce clause of the Federal Constitution when in fact they were not repugnant.

Nelson v. Sears, Roebuck & Company, 312 U. S. 372;

McGoldrick v. Berwind-White Coal Mining Company, 309 U. S. 33;

McGoldrick v. Compagnie General Transatlantique, 309 U. S. 430.

See also:

California v. Thompson, 313 U. S. 109.

II.

While the commerce clause requires that commerce between the states shall not be unduly impeded by state action, yet the state and its agencies have the power to levy taxes "designed to make interstate commerce bear a fair share of the cost of the local government from which it receives benefits."

Richfield Oil Corp. v. State Board of Equalization, 329 U. S. 69, 75.

III.

The respondents' trade school businesses are carried on in the City of Los Angeles, the product, *i.e.,* the courses, being prepared, processed, and administered exclusively in the City of Los Angeles, regardless of whether the students reside within or without the State of California.

Therefore the operation and effect of the taxing ordinance is to impose a legitimate burden upon the business carried on in the City and produces no direct burden on commerce.

American Manufacturing Co. v. City of St. Louis, 250 U. S. 459, 464.

IV.

The formulating, preparation, processing and administration of the correspondence courses is an activity carried on in the City of Los Angeles that is sufficiently separate from the transmission of such courses to students residing outside of California to permit local taxation.

Utah Power and Light Co. v. Pfost, 286 U. S. 165;

Michigan-Wisconsin Pipe Line Co. v. Calvert, 347 U. S. 157, 168;

Memphis Natural Gas Co. v. Stone, 335 U. S. 80, 87.

(a) The business activity in Los Angeles, which is the legitimate subject of a local tax, is no more an activity subject to "cumulative burdens" than is local publication of magazines sold interstate, or local manufacture of goods sold interstate.

Western Live Stock v. Bureau of Revenue, 303 U. S. 250;

International Harvester Co. v. Evatt, 329 U. S. 416, 419, 423;

American Manufacturing Co. v. City of St. Louis, 250 U. S. 459, 463, 464.

See also:

Miller Bros. Co. v. Maryland, 347 U. S. 340, 346-347.

V.

(a) The decisions of this Court which have in comparable cases required an apportionment of the gross receipts of an interstate business for purposes of local taxation, have founded the apportionment on the geographical situs of the taxpayer's activities.

Norton Company v. Department of Revenue, 340 U. S. 534;

Central Greyhound Lines, Inc. v. Mealey, 334 U. S. 653;

International Harvester Co. v. Evatt, 329 U. S. 416;

Gwin, White & Prince, Inc. v. Henneford, 305 U. S. 434.

(b) No apportionment has been required merely because a taxpayer's local activities had the effect of attracting receipts from an out-of-state geographical origin.

Western Livestock v. Bureau of Revenue, 303 U. S. 250.

(c) Assuming that the business done with correspondence students residing outside of California is interstate commerce (*International Text-Book Co. v. Pigg,* 217 U. S. 91), neither respondent has any employees or other business location outside the City of Los Angeles, and does not so contend. Thus, the *conduct of their respective business* is local, and though they may, through use of the United States Mails, be engaged in "commerce *among* the several States," they are not engaged in conducting a trade school *in* any state but California, and only and wholly in the City of Los Angeles within that State. The rule of apportionment is improperly applied by the District

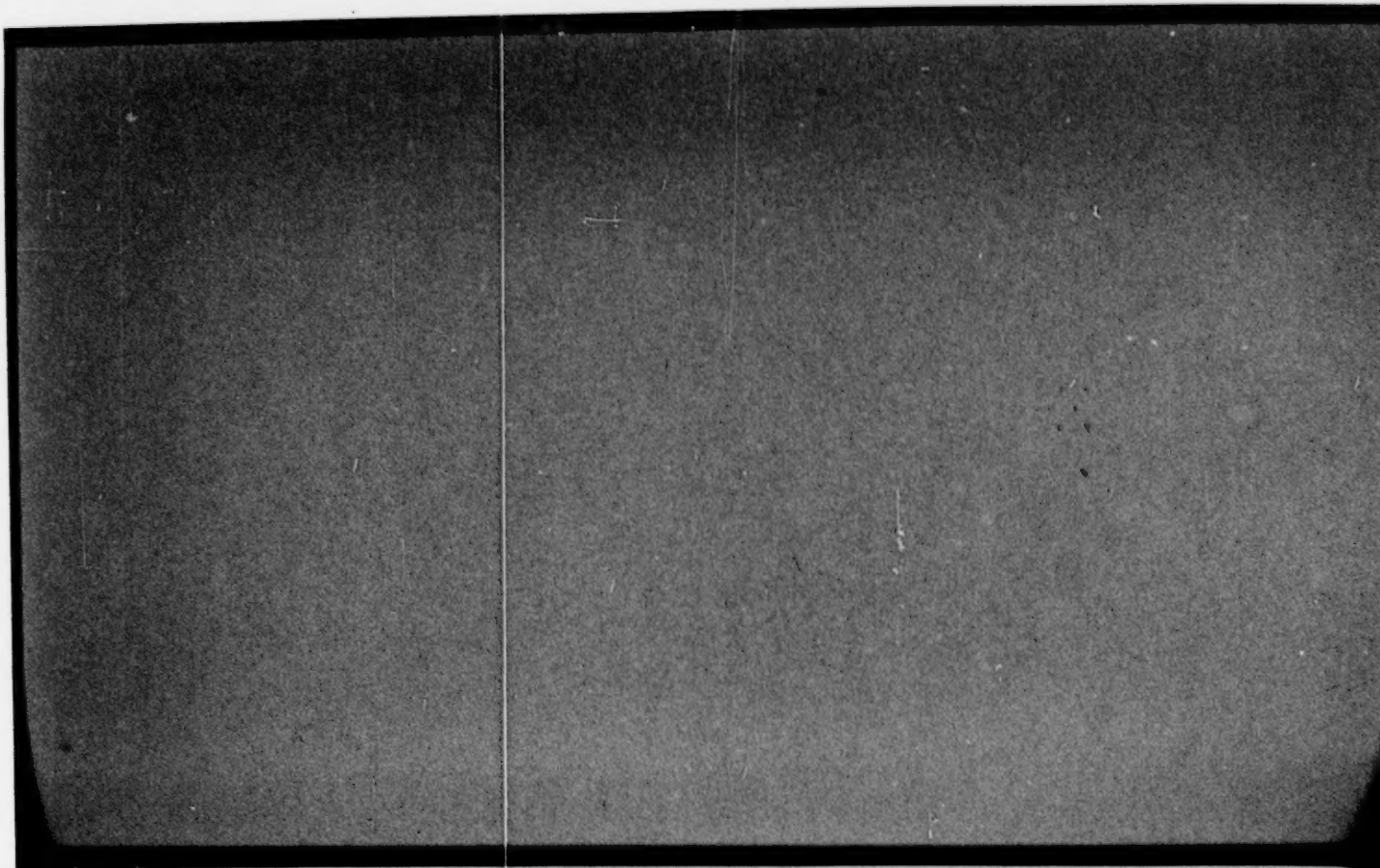
Court of Appeal to a taxpayer who has interstate receipts unless the taxpayer also engages in interstate activity to which those receipts are attributable.

Conclusion.

For the foregoing reasons, this petition for writ of certiorari should be granted.

Respectfully submitted,

ROGER ARNEBERGH,
City Attorney,
BOURKE JONES,
Assistant City Attorney,
JAMES A. DOHERTY,
Assistant City Attorney,
Counsel for Petitioners.



APPENDIX.

Exhibit A.

[Civ. No. 20713. Second Dist., Div. Three. Sept. 6, 1955.]

National Schools, Appellant, v. City of Los Angeles *et al.*, Respondents.

[Civ. No. 20712. Second Dist., Div. Three. Sept. 6, 1955.]

Radio-Television Training School, Inc., Appellant, v. City of Los Angeles *et al.*, Respondents.

Appeal from judgments of the Superior Court of Los Angeles County. John Gee Clark, Judge. Reversed with directions.

Actions for declaratory relief. Judgment for defendants in each case reversed with directions.

Thompson & Royston for Appellants.

Roger Arnebergh, City Attorney, Bourke Jones, and James A. Doherty, Assistant City Attorneys, for Respondents.

ASHBURN, J. *pro tem.**—These actions for declaratory relief were tried together and involve the same legal problems, which are presented in a single set of briefs on appeal. Each plaintiff conducts a correspondence trade school with headquarters in Los Angeles, and the greater portion of its business is interstate commerce. The respective complaints attack the application to plaintiff's business of the Los Angeles License Ordinance No. 77000, especially section 21.149 thereof, which at the time of commencement of the action imposed a licensing fee upon

---

*Assigned by Chairman of Judicial Council.

trade schools of $4.50 per quarter for the first $4,500, or less, of gross annual receipts, plus $1.00 per quarter for each additional $1,000 of such gross annual receipts, or fractional part thereof. The text is as follows: "For every person conducting a trade school, trade college, business school, business college, beauty school or beauty college, where instruction is given in any trade or occupation and a fee is charged for such instruction or compensation is received by such school or college by the sale of any goods, wares, merchandise or services, the sum of $4.50 per quarter for the first $4,500 or less of gross annual receipts, plus $1.00 per quarter for each additional $1,000 of such gross annual receipts or fractional part thereof. The provisions of this section shall not apply to a dramatic school."

Payment of the tax is a condition precedent to the doing of business within the city. Section 21.10 says: "No person shall engage in any business, profession, trade or occupation, or perform any act, required to be licensed under the provisions of this Article until such license is first obtained. . . ."

During the pendency of the actions and before trial, the section was amended, effective on January 1, 1952, to reduce the fee to $12 per year, or fraction thereof, for the first $12,000, or less, of gross receipts and in addition thereto, the sum of $1.00 per year for each additional $1,000 of gross receipts in excess of $12,000. Otherwise the text of the section was not changed. Primarily plaintiffs sought adjudication that the application of the ordinance to their businesses would constitute an unlawful burden upon interstate commerce,—this because of the peculiar nature of the business of each. The cause was submitted upon a written stipulation of facts, no oral

evidence was taken, and no findings made. The trial judge ruled in favor of defendant city, and hence these appeals.

Each plaintiff is a California corporation, with its executive office and its place or places of business located within the city of Los Angeles; National Schools is hereinafter designated as National and Radio-Television Training School, Inc. is called Radio. Radio is engaged exclusively in the business of conducting a correspondence school, teaching by means of home study a course in radio, television and allied electronics. National's operations are divided into three departments, a residence school, a home study division, and a students' store. In its residence school National conducts within the city an ordinary technical and trade school. Its student store is a retail store which is open to resident students and to the public. The company has in the past reported its income from the residence school and paid tax there n pursuant to section 21.149 of the ordinance; it has also reported its receipts from the store and paid thereon as required by section 21.167 (to which further reference will be made). National's home study division corresponds closely to Radio's activity. It is a correspondence school, instructing in radio, television and allied electronics and diesel, automotive and allied mechanics. Neither plaintiff has reported its gross income from or paid any tax to the city upon the conduct of the correspondence courses. For the present the discussion of National activities will be confined to the home study division, its correspondence school.

Radio's entire gross receipts consist of tuition payments. It has some 4,200 students, 82 per cent of whom reside outside of California. National has some 17,500 cor-

respondence students, 90 per cent of whom reside outside the state. About 45 per cent of its gross receipts comes from tuition fees. It thus appears that each plaintiff conducts a correspondence school business within California—18 and 10 per cent of students, respectively—and an interstate school from which Radio gets 82 per cent of its business and National 90 per cent.

The business of each company is nationwide, supported and promoted by generous advertising through magazines or the mails or both. When a prospect becomes a student he signs a contract which is forwarded to the home office in Los Angeles and there accepted. Radio has 15 field representatives who promote and service the business for it. National has no field representatives. Neither company has any office or place of business outside Los Angeles. The general procedure of each is substantially as follows. At the Los Angeles headquarters are prepared written lessons and materials for conducting experiments or constructing things like radio and television sets; these lessons and equipment are mailed to the students in installments from time to time; the student at his home base studies the lessons and performs the experiments and other work; he must fill out and return an examination paper on each lesson; also a report on each experiment or other job done; he is graded at the home office on each and comments are forwarded to him; these things go on, through the mails, for a period of 18 months for completion of the course; 139 completed lessons and examinations occur during the National curriculum and 112 in Radio's course of instruction. And final examinations must be passed. The instructors and graders remain in Los Angeles and the students in their respective homes.

It is agreed by counsel that this is interstate commerce so far as it embraces nonresident students. And it was so ruled, upon substantially the same facts, in International Text-Book Co. v. Pigg, 217 U. S. 91 [30 S. Ct. 481, 54 L. Ed. 678, 27 L. R. A. N. S. 493]. The stipulation of facts shows in each instance that the city proposes and intends to assess the said license tax to each plaintiff and "to include in the measure of said tax the plaintiff's gross receipts as hereinabove alleged from its correspondence students both within and without the State of California" and at the appropriate rates before and after amendment of section 21.149. The trial court ruled that "Gross receipts attributable to fees collected from home study students, whether located within or beyond the limits of the State of California, are properly and validly included in the measure of the tax imposed by the said Section 21.149."

We here enter upon the recurrent and delicate task of accommodating the ever-increasing demands for more taxes on the part of the federal and state governments and their subordinate taxing agencies, one whose history "is spread over hundreds of volumes of our Reports" (Freeman v. Hewit, 329 U. S. 249, 252 [67 S. Ct. 274, 91 L. Ed. 265]). And the problem must be attacked with a realization of this truth: "To attempt to harmonize all that has been said in the past would neither clarify what has gone before nor guide the future. Suffice it to say that especially in this field opinions must be read in the setting of the particular cases and as the product of preoccupation with their special facts." (Freeman v. Hewit, *supra,* at p. 252.)

It plainly appears here that the correspondence business of each plaintiff is readily severable into interstate

and intrastate schools, 90 per cent and 82 per cent interstate, and balance intrastate. The word school has varying connotations. (78 C. J. S. p. 605, §1; Board of Supervisors v. Cothran, 84 Cal. App. 2d 679, 682 [191 P. 2d 506]; Weisse v. Board of Education, 178 Misc. 118 [32 N. Y. S. 2d 258, 261]; Walkenhorst v. Kesler, 92 Utah 312 [67 P. 2d 654, 658]; Bastendorf v. Arndt, 290 Mich. 423 [287 N. W. 579, 580; 124 A. L. R. 445].) It may mean, among other things, the building in which instruction is given, or the assemblage within a building set aside for purpose of instruction, or the combination of teachers and pupils for the purpose of giving and receiving instruction; it may be on the mountaintop, or in a school yard, or may be held together by communication through the mails, or the radio or television. Correspondence schools fall in the last mentioned category. It is said in International Text-Book Co. v. Mueller, 149 Ill. App. 509, 512, that ". . . a school cannot exist without pupils, and necessarily where the pupils and instructors are located in different states, the school cannot properly be said to have an exclusive *situs* in one state." The tax in question is "in addition to and not in lieu of ad valorem taxes[1] or any other taxes imposed by the City of Los Angeles upon the plaintiff." And its incidence is upon "conducting a trade school," not some minor phase of same supposed to have detached tax relevance, such as preparing lessons and grading examination papers, or assembling materials for experiments preparatory to transmission to students. The tax is im-

---

[1]As to gross receipts tax in lieu and as measure of ad valorem tax on property, see Cudahy Packing Co. v. Minnesota, 246 U. S. 450, 452-455 [38 S. Ct. 373, 62 L. Ed. 827, 829-830]; Illinois Central R. Co. v. Minnesota, 309 U. S. 157 [60 S. Ct. 419, 84 L. Ed. 670].

posed upon the conduct of a school which itself constitutes interstate commerce and which is readily separable into interstate and intrastate branches.

The basic applicable rule of law is stated in Gwin, White & Prince v. Henneford, 305 U. S. 434, 438 [59 S. Ct. 325, 83 L. Ed. 272, 276]: "It has often been recognized that 'even interstate business must pay its way' by bearing its share of local tax burdens, Postal Teleg.-Cable Co. v. Richmond, 249 U. S. 252, 259 [39 S. Ct. 265, 63 L. Ed. 590, 594], and that in consequence not every local tax laid upon gross receipts derived from participation in interstate commerce is forbidden. (Citing cases.) But it is enough for present purposes that under the commerce clause, in the absence of congressional action, state taxation, whatever its form, is precluded if it discriminates against interstate commerce or undertakes to lay a privilege tax measured by gross receipts derived from activities in such commerce which extend beyond the territorial limits of the taxing state. Such a tax, at least when not apportioned to the activities carried on within the state, (citing cases) burdens the commerce in the same manner and to the same extent as if the exaction were for the privilege of engaging in interstate commerce and would, if sustained, expose it to multiple tax burdens, each measured by the entire amount of the commerce, to which local commerce is not subject."

And at page 441: ". . . For half a century, following the decision in Philadelphia & S. Mail S. S. Co. v. Pennsylvania, 122 U. S. 326 [7 S. Ct. 1118, 30 L. Ed. 1200], I Inters. Com. Rep. 308, it has not been doubted that state taxation of local participation in interstate commerce, measured by the entire volume of the commerce, is likewise foreclosed."